RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—BOUNDARIES—MISTAKE.—Plaintiff, owning and in possession of a city lot, brings suit to quiet title to a strip of land belonging originally to an adjoining lot but included in plaintiff's lot through a mistake as to the location of the boundary line. The strip had been openly occupied by plaintiff for more than the statutory period necessary to acquire title. Before bringing suit, but after this statutory period had elapsed, plaintiff had offered to purchase the strip from the defendant. *Held,* plaintiff's possession had ripened into title, although such possession was founded upon a mistake as to the true boundary. *Rennert* v. *Shirk* (1904), — Ind. —, 72 N. E. Rep. 546.

From the standpoint of ease of application the decision furnishes a method of determination both convenient and practical. Its doctrine is adhered to in many jurisdictions. *Woodward* v. *Faris,* 109 Cal. 12; *Tex* v. *Pflug,* 24 Nebr. 666; *Seymour* v. *Carli,* 31 Minn. 81; *French* v. *Pearce,* 8 Conn. 439; *Logsdon* v. *Dingg,* 32 Ind. App. 158; *Metcalfe* v. *McCutchen,* 60 Miss. 145. Other courts make the intention of the adverse claimant the basis of his right and hold that if he has possession up to the boundary as located, claiming title to such boundary, even though it be incorrect, his possession is adverse. *Preble* v. *Ry. Co.,* 85 Me. 260; *Bishop* v. *Bleyer,* 105 Wis. 330; *Beckman* v. *Davidson,* 162 Mass. 347; *Shotwell* v. *Gordon,* 121 Mo. 482; *Mode* v. *Long,* 64 N. C. 433. While not a few courts hold that if the intention is to claim to the boundary as located, only if it is the true boundary, the possession is not adverse. *Wilson* v. *Hunter,* 59 Ark. 626; *Taylor* v. *Fomby,* 116 Ala. 621; *Skinker* v. *Haagsma,* 99 Mo. 208; *Palmer* v. *Osborne,* 115 Ia. 714; *Small* v. *Hamlet,* (Ky.) 68 S. W. Rep. 395. The difficulty of applying the tests necessary under these decisions is altogether obviated under the doctrine of the principal case, where the open, visible and continuous possession is the sole standard. But like all rigid rules of law it must fail to effect justice in particular cases.

ATTACHMENT—FRAUDULENT CONVEYANCE—DAMAGES FOR BREACH OF PROMISE OF MARRIAGE.—One D. brought an action against M. for breach of promise of marriage and seduction and secured jurisdiction by levying attachment on M.'s land which, after the promise of marriage and before D.'s action, he had conveyed to his sister, the present plaintiff.

D. recovered judgment in the action against M. and M.'s interest in the land was sold. D. purchased at the sale and received a sheriff's deed. In this action by M.'s sister to try title, *Held,* (1) that M.'s deed was void as to creditors, and that D. was a creditor; (2) that the attachment proceedings gave jurisdiction and the sale to D. was valid. *Salemonson* v. *Thompson* (1904), — N. D. —, 101 N. W. Rep. 320.

Granting that attachment is the proper remedy in the particular case, the court's reasoning is logical and their conclusion sound. This use of attachment has some countenance in the authorities. *Morton* v. *Pearman,* 28 Ga.

323, sustains attachment in an action for breach of promise of marriage. On the other hand it has been held under practically the same code provision that a breach of contract of marriage was not such a contract as would support attachment. *Barnes* v. *Buck,* 1 Lansing (N. Y.) 268. In later revisions of the New York code it is specifically stated that attachment will not lie in such an action. Sec. 635 Stover's N. Y. Annotated Code of Civil procedure (1902). And the great weight of authority is against the holding in the principal case, because the remedy by attachment is generally confined to actions in which the amount the plaintiff is entitled to can be specified. But in cases like the principal one the damages are problematical. *Price* v. *Cox,* 83 N. C. 261; *Conley* v. *Creighton,* 5 Ohio Dec. 402.

BAILMENTS—LIABILITY OF PRIVATE CARRIER ON A SPECIAL CONTRACT.—Plaintiff entered into a contract with defendant corporation whereby the latter agreed to move for plaintiff certain household goods. Defendant promised to move the articles carefully and safely. One of the defendant's servants carried from plaintiff's house an oil portrait and, before putting it upon the load, leaned it against the side of a wagon which was being used in transporting the furniture. While the picture was in that position, it was struck by a small boy and injured. In this action to recover damages, *Held,* that defendant was "an ordinary bailee for hire" and not liable, the damage having been done by the wanton act of a third person. *Jaminet* v. *American Storage & Moving Co.* (1904), — Mo. —, 84 S. W. Rep. 128.

It was argued by plaintiff that the defendant had assumed, by its agreement, the liability of a common carrier, and, the lower court having sustained this contention, the principal contention of defendant, on appeal, was that the lower court had erred in so holding, in place of leaving this question for the determination of the jury. That defendant was a common carrier would seem to be shown by the following authorities: *Caye* v. *Pool's Assignee,* 108 Ky. 124, 55 S. W. 887, 49 L. R. A. 251; *Robertson & Co.* v. *Kennedy,* 2 Dana (Ky.) 430, 26 Am. Dec. 466; *Robinson* v. *Cornish,* 13 N. Y. Supp. 577; *Jackson A. Iron Works* v. *Hurlbut,* 158 N. Y. 34, 52 N. E. 665, 70 Am. St. Rep. 432; *Campbell* v. *Morse,* Harp. L. (S. C.) 300; *Farley* v. *Lavary,* 107 Ky. 523, 54 S. W. 840. But the court held this question to be of no material importance in view of the undertaking of the defendant. As to that, the position of the court was that the defendant was an ordinary bailee for hire and was liable only for the negligence or lack of skill of its servants, and that the injury of the portrait, by the boy, was not a risk which the defendant had, by its agreement, assumed. It would seem to be a not unreasonable view of the case, to assume that the servant of defendant was negligent in leaning a valuable and unprotected oil painting against a wagon on a public thoroughfare, but this question seems not to have been presented by the case. There appears to be no definite rule as to the extent to which a bailee's implied obligation to use ordinary diligence is varied by a contract to carry safely,—this seeming to be a question to be determined by the terms of the contract. But it is an established rule that a bailee may, by contract, increase his liability so as to insure against loss or damage to the bailed goods. *Rohra-*